

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	CASE NO. 4:07-CR-124
	§	HOUSTON, TEXAS
VERSUS	§	TUESDAY,
	§	FEBRUARY 20, 2007
DANIEL JOSEPH MALDONADO	§	3:45 P.M. TO 5:17 P.M.

PRELIMINARY AND DETENTION HEARING
(PARTIAL TRANSCRIPT - SOME PORTIONS
PREVIOUSLY TRANSCRIBED SEPARATELY)

BEFORE THE HONORABLE CALVIN BOTLEY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	SEE NEXT PAGE
For the Defendant:	SEE NEXT PAGE
Court Recorder:	Yvonne Pippin

PREPARED BY:

JUDICIAL TRANSCRIBERS OF TEXAS, INC.
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(281) 277-5325 (office)
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APPEARANCES:

For the Government:

Mr. Gary Cobe, AUSA
U.S. ATTORNEY'S OFFICE
P.O. Box 61129
Houston, Texas 77208-1129

For the Defendant:

Mr. Brent Newton
Deputy Staff Director
U.S. SENTENCING COMMISSION
One Columbus Circle NE
Washington, DC 20002

- A N D -

Mr. Michael Herman, AFPD
PUBLIC DEFENDER'S OFFICE
440 Louisiana, Ste. 310
Houston, Texas 77002

Also appearing:

David Hernandez,
Pretrial Services

Mr. Abe Martinez
(No information provided)

Paul Yebernetsky, Clerk

U.S. Marshal
(No information provided)

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1 HOUSTON, TEXAS; TUESDAY, FEBRUARY 20, 2007; 3:45 P.M.

2 **THE COURT:** In Criminal Action Number H-07-125M,
3 The United States of America versus Daniel Joseph Maldonado.
4 Mr. Maldonado.

5 **MR. COBE:** Gary Cobe for the United States, Your
6 Honor.

7 **THE COURT:** And Mr. Cobe.

8 **MR. NEWTON:** Brent Newton and Mike Herman for
9 Mr. Maldonado.

10 **THE COURT:** And Mr. Newton and Mr. Herman.

11 All right. Gentlemen, did I understand
12 correctly that a request has been made that this matter be
13 held *in camera* or are you wanting to move forward in open
14 court?

15 **MR. COBE:** Open court would be fine, Judge.

16 **MR. NEWTON:** Open court is fine with me.

17 **THE COURT:** All right. Fine.

18 Mr. Maldonado, you are here charged in a
19 criminal complaint for conspiring to use a weapon of mass
20 destruction as defined in federal law, and receiving military
21 type training from al-Qaeda, an organization designated by the
22 Secretary of State to be a foreign terrorist organization, all
23 in violation of Title 18 of the United States Code, Section
24 2332 subsection (a) and (b), and 2239(d).

25 The United States has moved for your

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1 detention as a flight risk and danger to the community.

2 Is the United States, Mr. Cobe, prepared to
3 proceed on its motion?

4 **MR. COBE:** Yes, Your Honor, as well as the probable
5 cause hearing.

6 **THE COURT:** All right. Mr. Newton and Mr. Herman,
7 are you prepared to proceed on the issue of detention and
8 probable cause in this matter?

9 **MR. NEWTON:** Yes, Your Honor.

10 **MR. HERMAN:** Yes, Your Honor.

11 **THE COURT:** All right. Who will be lead counsel?

12 **MR. NEWTON:** I will be, Your Honor.

13 **THE COURT:** Mr. Newton, you will be.

14 All right. Mr. Maldonado, be seated at
15 counsel table. While you're doing that --

16 Marshal?

17 **THE MARSHAL:** Yes, Judge.

18 **THE COURT:** We're going to take a brief recess to
19 allow you to transfer the defendants that are here and secure
20 Mr. Maldonado here until we complete this proceeding.

21 **THE MARSHAL:** Yes, Your Honor.

22 **THE COURT:** All right. How long will it take you
23 to do that?

24 **THE MARSHAL:** About two or three minutes, Judge.

25 **THE COURT:** All right. Let's have a brief recess

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1 for about five minutes, please.

2 **THE CLERK:** All rise.

3 **(Recess taken from 3:48 p.m. to 3:57 p.m.)**

4 **THE COURT:** Be seated everyone, please.

5 All right. Mr. Cobe?

6 **MR. COBE:** Government calls John McKinley, Your
7 Honor.

8 **THE COURT:** Sir, come forward. Raise your right
9 hand and be sworn.

10 **(Witness sworn.)**

11 **THE COURT:** Come to the witness stand, sir, and be
12 seated.

13 **DIRECT EXAMINATION OF JOHN McKINLEY**

14 **BY MR. COBE:**

15 Q Good afternoon.

16 A Sir.

17 Q Would you state your name, please?

18 A John McKinley.

19 Q Are you employed?

20 A Yes, I am.

21 Q Where?

22 A With the FBI in the Houston Division.

23 **THE COURT:** Sir, spell your last name for me,
24 please.

25 **THE WITNESS:** Yes, sir. M-C-K-I-N-L-E-Y.

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1 **THE COURT:** Oh, McKinley?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Thank you, sir.

4 **BY MR. COBE:**

5 Q In what capacity are you employed with the FBI?

6 A I'm a special agent on a counter-terrorism squad.

7 Q And how long have you been with the FBI?

8 A Since May of 2004.

9 Q And how long have you been on the counter-terrorism
10 squad?

11 A I've been there since September of 2004.

12 Q Okay. In the course of your duties with the FBI and in
13 general reading are you familiar with al-Qaeda?

14 A Yes, I am.

15 Q What is that? What is al-Qaeda?

16 A Al-Qaeda is a organization that has been designated as a
17 terrorist organization by the State Department, going back to
18 October of 2003 and prior to that, as well.

19 Q Okay. And is it currently designated, as well?

20 A Yes, it is.

21 Q Do you know where they operate?

22 A They operate in many areas. As is pertinent today, they
23 do operate in Somalia.

24 Q Okay. Are you familiar with whether the United States
25 has any operations or has had any operations in Somalia?

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1 A Yes, sir. In January of 2007, the Pentagon confirmed
2 that U.S. military aircraft conducted air strikes on al-Qaeda
3 leadership in southern Somalia.

4 Q Okay. Now going back to operations of al-Qaeda in
5 Somalia -- Well, let me ask you first, have you ever been to
6 Somalia?

7 A Yes, sir.

8 Q When were you there?

9 A I was there in 1994 with Operation Restore Hope and other
10 operations, as well.

11 Q And in what capacity there?

12 A Sir, I was in the military at the time. I was assigned
13 to the 11th Marine Expeditionary Unit.

14 Q And as a result of your experience there did you gain
15 information concerning Somalia and al-Qaeda?

16 A Concerning Somalia, yes, sir.

17 Q Okay. And as a result of having been there have you
18 because of that kind of stayed up on current events in that
19 area --

20 A Yes, sir, I have.

21 Q -- and the geo-political situation?

22 A Yes, sir, I have.

23 Q Okay. You familiar with what everybody knows as
24 Blackhawk Down?

25 A Yes, sir.

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1 Q And are you familiar with who took responsibility for
2 that --

3 A Al-Qaeda --

4 Q Go ahead.

5 A Al-Qaeda took credit for that, for that operation, sir.

6 Q Okay. Specifically, who?

7 A Osama bin Laden took credit and claimed that he had his
8 people in Mogadishu for that.

9 Q And --

10 **THE COURT:** Excuse me, Mr. Cobe. That question
11 causes me to interrupt you. I know and I think most people
12 know in the United States what Blackhawk Down means, but we're
13 making a record here. So I want an explanation as to --
14 further explanation --

15 **MR. COBE:** Yes, Your Honor.

16 **THE COURT:** -- as to what that means.

17 **MR. COBE:** I'll have him explain that.

18 **THE COURT:** All right.

19 **BY MR. COBE:**

20 Q What was the situation in what we're calling Blackhawk
21 Down?

22 A Sir, in October of 1993, United States Army Rangers from
23 Task Force Ranger were sent into Mogadishu to capture some
24 high value targets that were part of the insurgents there that
25 were fighting against U.S. troops. During the course of that

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1 operation several helicopters were shot down in a protracted
2 fire fight resulting in the death of approximately 17 to 18
3 United States Army service members occurred.

4 Q Okay. And are you also familiar with the United States
5 Embassies that were bombed over in the region of Somalia?

6 A Yes, sir. In either 1998 or '99, al-Qaeda claimed credit
7 for the simultaneous -- near simultaneous bombings of two
8 United States Embassies in Eastern Africa.

9 Q Okay. Do you know the countries that those were in?

10 A One was in Nairobi, Kenya. The other one, I believe, was
11 Tanzania, I believe.

12 Q And who claimed responsibility for those?

13 A Al-Qaeda again.

14 Q Now you stated that you are familiar with -- Oh, now you
15 talked about the United States bombing over there in Somalia,
16 correct?

17 A Yes, sir.

18 Q Okay. Now you've also said that you're familiar with the
19 geo-political situation over there in Somalia. Would you give
20 just a brief analysis of what has happened over there?

21 **THE COURT:** Excuse me, Mr. Cobe.

22 **MR. COBE:** Yes, Your Honor.

23 **THE COURT:** Mr. Martinez, I thought you were co-
24 counsel to Mr. Cobe in this matter.

25 **MR. MARTINEZ:** Your Honor, Jeff Bate (phonetic) is

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1 co-counsel. I'm their supervisor, Your Honor.

2 **THE COURT:** All right. But you visited me in
3 chambers about this case at one point in time, you -- Okay. I
4 just wanted to make sure we wasn't excluding you from counsel
5 table.

6 **MR. MARTINEZ:** I appreciate it, Your Honor. Thank
7 you.

8 **THE COURT:** All right. Let's proceed.

9 **MR. COBE:** Thank you, Your Honor.

10 **BY MR. COBE:**

11 Q Continue.

12 A Yes, sir. In 1991, the dictator by the last name of
13 Barre was ousted and some -- conflicts started there between
14 different factions within, primarily in Mogadishu.

15 In 2004, a group called al-Ithihaad al-
16 Islamiya, or AIAI, became prominent. Shortly thereafter,
17 fighting broke out between the transitional federal government
18 in Mogadishu and the AIAI. The AIAI also, it should be noted,
19 is part of another group called -- or helped form another
20 group called the ICU, or the Islamic Courts Union. There was
21 a lot of cross over between those two organizations.

22 In summary, the transitional federal
23 government in Mogadishu was fighting with the ICU. The
24 transitional federal government then fled to Baidoa where they
25 were attacked by the ICU, and those attacks included small

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1 arms attacks, improvised explosive devices, car bombs, things
2 of that nature. That was in June of 2006.

3 In the Fall of 2006 Ethiopian forces began
4 entering into Somalia. On December 20th of 2006, heavy
5 fighting broke out around the Baidoa region between Ethiopian
6 and transitional federal government forces and the ICU and the
7 AIAI. On December 29th Ethiopian forces entered into
8 Mogadishu, and the ICU and the AIAI troops fled south.
9 Primarily ICU by this time and they fled south down towards
10 Chisimayu.

11 Q Okay. And the goal of this ICU was what?

12 A Their goal was to establish an Islamic state in Somalia.

13 Q Now, were they supported by al-Qaeda?

14 A Absolutely.

15 Q And what is the goal of al-Qaeda?

16 A Al-Qaeda's goal is to establish the Caliphate, or the
17 Islamic government.

18 Q Over -- in just Somalia, or --

19 A Over -- No, sir, regionally. They would probably say the
20 world, but at least in that region.

21 Q And in that confrontation who did we support, the United
22 States?

23 A The United States supported the Ethiopians and the
24 transitional federal government.

25 Q Okay. And the way we -- one of the ways we supported them

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1 was in the bombing that you already testified to?

2 A Yes, sir.

3 Q How do we know that al-Qaeda supports the ICU?

4 A Sir, in July of 2007 Osama bin Laden issued a statement in
5 which he called on Muslims all over the world to rally to the
6 cause of Somalia, to help establish the nucleus of the
7 Caliphate, I believe are the words he used. Again, in January
8 of 2007, his second in command, Ayman al-Zawahiri, made a
9 similar call for support of some of the factions fighting
10 there, the Islamic factions fighting in Somalia, and
11 specifically mentioned suicide attacks in his call.

12 Q Okay. Are you familiar with a person by the name of
13 Daniel Maldonado, also known as Daniel Aljughaifi?

14 A Yes, sir.

15 Q Do you see that person in the courtroom today?

16 A Yes, sir. He's sitting at the table here in the green
17 shirt.

18 **MR. COBE:** Let the record reflect the witness has
19 identified the defendant, Your Honor.

20 **THE COURT:** So ordered. Proceed.

21 **BY MR. COBE:**

22 Q Do you know what his citizenship is?

23 A Sir, he's a United States citizen.

24 Q And his religion?

25 A Sir, he's a Muslim.

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1 Q Has he always been a Muslim, do you know?

2 A As I understand it he is a convert.

3 Q Are you aware of whether he left the country at any time?

4 A Yes, he did.

5 Q And when he -- before he left or when he left what was his
6 last known residence?

7 A Sir, his last known residence was 9888 United Drive, I
8 believe it was Apartment 2207 here in Houston.

9 Q Okay. It was in Houston, Texas?

10 A Houston, Texas.

11 Q Okay. And where did he go?

12 A He went from here to Egypt.

13 Q Okay. And when did he leave?

14 A November of 2005.

15 Q And how long, about, did he stay in Egypt?

16 A He stayed approximately one year.

17 Q And then where did he go?

18 A From there he went to Somalia and arrived in Mogadishu.

19 Q And when was that that he went to --

20 A November of 2006.

21 Q Did anyone go with him at that time?

22 A He took his family.

23 Q Okay. Which consisted of what?

24 A Wife and three kids.

25 Q Okay. Do you know why he went there?

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1 A Sir, he went there to fight jihad. And as he defined it,
2 it was raising the word of Allah above those who would fight
3 against the faith and attack the faith. He went there to help
4 support the Islamic -- what he considered to be a legitimate
5 Islamic government in Somalia.

6 Q And do you know whether he discussed who he was willing to
7 fight?

8 A Yes, sir. At first he was going to fight against Somali
9 militias. That eventually turned into Ethiopians. And he
10 admitted that if Americans had come in he would have fought
11 against Americans, as well.

12 Q He was willing to kill Americans?

13 A He had no problem, were the words he used.

14 Q Did he say why he was willing to kill Americans?

15 A Sir, he said he's angry at America.

16 Q Did he mention the 9/11 attacks?

17 A Yes, sir, that also. He said he had no problem with the
18 9/11 attacks.

19 Q So what happened when he arrived in Somalia?

20 A Sir, he arrived in Mogadishu, was taken in by someone he
21 identified as the "Sheik." The "Sheik" took him to his house
22 and provided Mr. Maldonado with an AK-47 and a -- it's called a
23 juba, it's a garment that you use to carry magazines.

24 Q Okay. And at that point did he receive any training?

25 **THE COURT:** Excuse me, Mr. Cobe.

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1 Agent McKinley, when you're speaking, when
2 you get to the end of your sentence you putting your head down
3 --

4 **THE WITNESS:** Okay.

5 **THE COURT:** -- and I'm not hearing your full
6 sentence. Pull that microphone before you. Speak into the
7 microphone and it'll amplify your voice, as well as record your
8 statements, sir.

9 **THE WITNESS:** Is that better, sir?

10 **THE COURT:** Yes, sir.

11 **THE WITNESS:** Thank you.

12 **THE COURT:** Much better.

13 **BY MR. COBE:**

14 Q Let me ask you first, did you say -- I think we ended up
15 with he was met by a person by the name of "Sheik?"

16 A The "Sheik," yes, sir.

17 Q The "Sheik." And what occurred when he was met by the
18 "Sheik?"

19 A Sir, the "Sheik" gave him an AK-47 and, as I said earlier,
20 a juba, which is the garment by which -- or with which he would
21 carry magazines for that rifle.

22 Q And did he receive any training?

23 A Yes, sir, he received training on how to disassemble and
24 clean the weapon.

25 Q Did he receive any other training?

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1 A Sir, he described a training regimen while in Mogadishu
2 that consisted of firearms training, physical fitness training,
3 and explosives training.

4 Q Let me ask you, it's going to seem like a very obvious
5 question, but why would someone train in firearms, how to shoot
6 firearms and in bombing?

7 A That would be for combat.

8 Q Was he supplied with any gear besides the AK and the juba?

9 A Yes, sir. He went to a house where others were supplied
10 with uniforms and weapons. Mr. Maldonado related that as he
11 already had a weapon, he only took the uniform items, which
12 consisted of military-style camouflage clothing and boots.

13 Q Did he express any desire to go to the front to fight?

14 A He did.

15 Q And that desire was that he wanted to go to the front?

16 A Yes, sir. Yes. Sorry. He expressed a desire to go to
17 the front.

18 Q Did he admit to knowing that there were any al-Qaeda
19 members residing and training at the camp in Mogadishu?

20 A Yes, he did. He identified several people that were al-
21 Qaeda members. He noted that they were treated with more
22 respect than people who --

23 Q Okay. Well, let's take this one at a time.

24 A Sure.

25 Q Did he identify anyone in particular?

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1 A Yes, he identified the chief explosives instructor there
2 at the camp, and also another gentleman from Yemen.

3 Q Okay. What did he say about the Yemeni?

4 A That he would sit at night and tell stories of Osama bin
5 Laden and things of that nature. Seemed to know him, seemed to
6 be familiar.

7 Q Okay. Do you know what stories did he relate to you -- or
8 relate what stories were told?

9 A Stories of bin Laden in Sudan and providing construction
10 equipment and construction services.

11 Q So, did it -- did what was related indicate that he knew
12 bin Laden fairly well?

13 A Yes, sir. That matches publicly known information.

14 Q Publicly known information that bin Laden was in fact
15 there with construction equipment?

16 A Was -- Yes, sir. That he performed a lot of construction
17 work in Sudan.

18 Q Did the defendant ID or acknowledge certain other members
19 who were in that camp? Other al-Qaeda members who were in the
20 camp?

21 A Yes, he did.

22 Q And did he know who all the al-Qaeda members were?

23 A He did not.

24 Q Did he have an opinion as to their stature in the camp in
25 relation to the -- what he believed to be the non-al-Qaeda

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1 fighters?

2 A He indicated that they were treated with more respect.
3 "They" being the al-Qaeda members.

4 Q Did he make any mention of a major al-Qaeda operative
5 being in the country?

6 A Yes, he made mention of a major al-Qaeda figure in the
7 southern part of Somalia who was conducting operations at the
8 time.

9 Q Did he talk about or mention what he and other fighters,
10 mujahadin would discuss at the camp?

11 A They discussed touring Egypt, Somalia, and a couple of
12 other countries and just sort of a core element of the
13 Caliphate.

14 Q And did they say -- how did they intend to do that?

15 A By -- through the means of jihad, sir.

16 Q Maybe we should have you -- Well, I guess you kind of did.
17 What does jihad mean?

18 A The way Mr. Maldonado defined it, sir, it was raising the
19 word of Allah uppermost by fighting against those who would
20 attack the religion of Islam.

21 Q By fighting then?

22 A By fighting, yes, sir, specifically mentioned.

23 Q Did he stay in Mogadishu?

24 A No, sir.

25 Q Where did he go?

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1 A He went to a town called Chisimayu which is on the
2 coastline south of Mogadishu.

3 Q Did he pass through another town on the way?

4 A Yes, sir, he passed through a town called Jilib.

5 Q Was there any training in Jilib?

6 A Yes, there was.

7 Q Was that military training also?

8 A That was also more firearms and physical training.

9 Q Having been to Somalia, do you know where Chisimayu is?

10 A Yes, sir. It is along the coastline and it's south of
11 Mogadishu.

12 Q Do you know anything about it?

13 A It is the stronghold for the ICU right now and al-Qaeda.

14 Q And are those the al-Qaeda, slash, ICU personnel who are
15 engaging in operations in Somalia?

16 A Yes, sir.

17 Q Did the defendant admit having some interaction with a
18 flight attendant?

19 A Yes, sir, he did.

20 Q What was that?

21 A Sir, a flight attendant had been caught by others taking
22 cell phone pictures of mujahadin who were flying into
23 Chisimayu.

24 Q Okay. What did he refer to this flight attendant as?

25 A He called him a spy. The spy was forcibly removed from

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1 the hotel where he was staying and taken to a house across the
2 street.

3 Q And what did they do to him at the house?

4 A They beat him and interrogated him.

5 Q Did the defendant admit to participating in that?

6 A Yes, sir. He admitted to holding a weapon to the man and
7 threatening to kill him.

8 Q Did he assist in guarding the man?

9 A Yes, sir, he did. He also assisted in interrogating the
10 man, as both the spy and Mr. Maldonado spoke English.

11 Q Did you find out or did he say what happened to that
12 flight attendant?

13 A Mr. Maldonado told us later that that flight attendant had
14 been killed.

15 Q Did the military training continue in Chisimayu?

16 A Yes, sir, it did.

17 Q Did the defendant ever fire his AK-47 that he received?

18 A Yes, sir, he did.

19 Q What other weapons were in the camp and trained on?

20 A Other weapons included machine guns, I believe RPG's, and
21 explosives. RPG's being rifle-propelled grenades, anti-tank
22 weapons.

23 Q Did the defendant admit consorting with a bomb maker?

24 A Yes, sir, he did.

25 Q What did he say?

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1 A Mr. Maldonado told us that the bomb maker would make and
2 then test improvised --

3 Q Let's narrow it down here first.

4 A Okay.

5 Q Did he spend time with him in Jilib as well as in
6 Chisimayu?

7 A I believe he did.

8 Q And what did he generally say this man did?

9 A He made and tested explosives.

10 Q So he assembled them, manufactured and tested them?

11 A Assembled them, manufactured and tested.

12 Q Did he observe this bomb maker on a regular basis, or did
13 it seem --

14 A Yes.

15 Q -- so?

16 A Yes, it did.

17 Q And what things did he observe this bomb maker doing?

18 A He observed this bomb maker grinding down match tips on an
19 orange plate and that those match tips were used as detonators.
20 He observed a quantity of what he was told was TNT in a plastic
21 pipe. He observed this gentleman, like we mentioned earlier,
22 making and then testing these IED's.

23 Q And where would he test those explosives?

24 A He would test those up against a wall in the compound
25 there. He also saw that this gentleman carried with him a pink

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1 explosives manual and two bottles that he treated rather
2 carefully.

3 Q Okay. And did he indicate that he had had any
4 conversations with this bomb maker?

5 A Yes, he did.

6 Q What did those conversations consist of?

7 A The bomb maker had told Mr. Maldonado that he would be
8 unable to -- "he" being the bomb maker, would be unable to go
9 through any airport in the world because of the explosives he
10 had handled.

11 Q Okay. Was it the bomb maker who told him what the match
12 tips were supposed to be used for?

13 A Yes.

14 Q And was it the bomb maker who told him what was in the
15 bottles that he was carrying?

16 A Yes, he did.

17 Q And was this information, or at least some of it,
18 corroborated?

19 A Yes, it was.

20 Q By?

21 A A cooperating witness.

22 Q And did he corroborate the pink manual?

23 A Yes, sir, he did.

24 Q Did he corroborate the amber-colored bottle?

25 A Yes, sir, he did.

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1 Q And did he corroborate the fact that he heard explosions
2 around the compound?

3 A Yes, sir, he did.

4 Q And did he mention something about a double-A battery?

5 A Yes, sir. The CW had told us that he saw a double-A
6 battery with explosive powder inside.

7 Q Did he say whether the bomb maker was the designated
8 explosives instructor for that camp?

9 A Sir, the bomb maker was not the designated explosives
10 instructor.

11 Q By what the defendant said? By what Mr. Maldonado said?

12 A By what the defendant said.

13 Q And who did he say the designated bomb instructor was?

14 A There was another man in the camp, who seemed to be
15 missing a couple of fingers from one of his hands, who was the
16 explosives instructor for the camp.

17 Q And was that person ever identified? Did he ever -- did
18 the defendant ever see a picture of this person?

19 A Yes, he did, on a FBI most wanted poster.

20 Q Okay, and what was that in reference to?

21 A That was in reference to the embassy bombings we talked
22 about a few minutes ago.

23 Q All right, so he was wanted for the embassy bombings that
24 were perpetrated by the al-Qaeda?

25 A Yes, sir.

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25

1 Q Was the defendant ever approached about someone asking him
2 to get him hooked up with somebody to teach him how to make
3 bombs?

4 A Yes, sir. Another individual in the camp approached Mr.
5 Maldonado seeking an introduction to the bomb maker.

6 Q Was there ever any discussion about whether the defendant
7 would go to the front?

8 A Yes, sir, he indicated a willingness to go to the front.

9 Q Okay. And then was there any talk then after that, even
10 after he had indicated a willingness to go to the front, was
11 there any talk that he would not be going to the front?

12 A The cooperating witness told us later that he'd heard from
13 Mr. Maldonado's associates in the camp that Mr. Maldonado had
14 been selected for additional training and would not be going to
15 the front to fight.

16 Q Now, did that cooperating witness mention anything about
17 al-Qaeda trying to get him to return to the U.S. to recruit
18 women?

19 A Yes, sir. The cooperating witness advised us that he had
20 been approached to recruit a quantity of American women to go
21 overseas and receive training in Somalia.

22 Q In Somalia. Was there any talk about what they would do
23 after they received their training?

24 A That, I don't know, but it seems logical that they would
25 have been sent back to the U.S. with that training.

McKinley - direct by Mr. Cobe

26

1 Q Okay. The women that they wanted him to recruit were to
2 be from what country?

3 A From America.

4 Q And speak what language?

5 A English.

6 Q How did Mr. Maldonado come into U.S. custody?

7 A Sir, he was captured by Kenyan authorities coming across
8 the border, the northern border, I would assume, of Kenya from
9 Somalia.

10 Q Okay. Were there other people captured with him?

11 A Yes, sir, there were several other people who were
12 captured with him. I believe there were a couple of British
13 citizens and at least one Swede, as well.

14 Q Okay. And was this -- they were fleeing as a result of
15 Ethiopians chasing them across the border; is that correct?

16 A Yes, sir, these were mujahadin who were fleeing from
17 Somalia.

18 Q And then the Kenyans -- the Kenyan authorities captured
19 him?

20 A Yes, sir.

21 Q And they turned him over to the United States authorities?

22 A Yes, sir.

23 Q How was he treated by the U.S. when we got him?

24 A By his own admission, Mr. Maldonado was treated very well
25 by the U.S.

McKinley - direct by Mr. Cobe

27

1 Q Okay. Was he fed?

2 A Yes, sir. When the first FBI personnel began to interview
3 him they brought him clean clothing, shoes, made sure he
4 received food, things of that nature.

5 Q And did they talk to him? Did they question him?

6 A Yes, sir.

7 Q Did they read him his Miranda rights?

8 A Yes, sir. He was not questioned till after he had been
9 read his rights.

10 Q Was he then brought back to the U.S.?

11 A Yes, sir, he was.

12 Q And where did the plane land in the U.S.?

13 A The plane landed at Ellington Air Force Base.

14 Q In the Southern District of Texas?

15 A Yes, sir.

16 Q When was that?

17 A That was February 12th, I believe.

18 Q Okay. Of this year, 2007?

19 A Of this year. Yes, sir, 2007.

20 Q Do you know what happened to his family?

21 A Sir, Mr. Maldonado's wife, unfortunately, died overseas.
22 His children were looked after by the Kenyan authorities. And
23 then once FBI personnel arrived they also helped to care for
24 Mr. Maldonado's children. And in fact, some of our agents
25 actually spent some of their own money to make sure that the

McKinley - redirect by Mr. Cobe

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1 children had some of the things they needed over there.

2 Q And did they then make sure that he got -- that they got
3 back with their grandparents --

4 A Yes, sir, the --

5 Q -- back in the U.S.?

6 A Yes, sir. A FBI agent and a United States military
7 physician flew back with the children to the United States.

8 Q Do you know what it is or have a belief as to what it is
9 that the wife died from?

10 A I believe malaria, sir.

11 MR. COBE: I have no further questions, Your Honor.

12 THE COURT: All right. Mr. Newton, you may examine
13 the witness.

14 (Cross-Examination of John McKinley by Mr. Newton
15 previously transcribed separately.)

16 THE COURT: Mr. Cobe, any further questions?

17 MR. COBE: Just a couple, Judge.

18 THE COURT: Proceed.

19 REDIRECT EXAMINATION OF JOHN MCKINLEY

20 BY MR. COBE:

21 Q You were asked on cross examination about the firearms and
22 explosives training and where that information came from. Did
23 it come from the defendant himself and from the cooperating
24 witness?

25 A Yes, sir, it did.

McKinley - recross by Mr. Newton
- by the Court

1 Q When there was a firearms -- at one of the firearms
2 training do you recall there being a competition?

3 A Yes, sir. At one of the firearms evolutions the winner of
4 the competition was permitted to fire an RPG.

5 Q And I think you mentioned something about Mr. Maldonado
6 being skinny. That happens when you run around playing jihad,
7 might it not?

8 A Yes, sir.

9 MR. COBE: No further questions, Judge.

10 MR. NEWTON: A followup question.

11 THE COURT: Mr. Newton.

12 **RECROSS-EXAMINATION OF JOHN McKINLEY**

13 **BY MR. NEWTON:**

14 Q At the training where supposedly their reward was getting
15 to shoot a rocket-propelled grenade, I suppose, did Mr.
16 Maldonado ever shoot a rocket-propelled grenade?

17 A I don't know.

18 Q You don't know one way or the other?

19 A I don't know.

20 MR. NEWTON: Pass the witness.

21 THE COURT: All right. Any other questions?

22 MR. COBE: No further questions.

23 **EXAMINATION OF JOHN McKINLEY**

24 **BY THE COURT:**

25 Q Let me ask you, Agent McKinley --

McKinley - by the Court

30

1 A Sir.

2 Q I'm a little confused. You said Mr. Maldonado left
3 Houston and went abroad?

4 A Yes, sir.

5 Q Okay. But his parents live in -- where?

6 A New Hampshire, sir.

7 Q New Hampshire. Is he originally from New Hampshire or
8 from Houston?

9 A Sir, I don't know where his -- where he's from originally.
10 I know that he came to Houston in 2005, in August of --

11 Q Do you know from where?

12 A I believe either from Boston or somewhere northeast, sir.

13 Q I see. All right. Okay.

14 In your testimony you said in 1991 a dictator
15 was ousted. From where? Where did this occur?

16 A That was in Somalia, sir.

17 Q In Somalia. And then you said 2004 fighting began between
18 two factions. What were those two factions?

19 A Sir, the fighting that broke out was between the
20 transitional federal government and the ICU.

21 Q All right. Was the United States supporting the ICU?

22 A The ICU? No, sir.

23 Q Were they supporting the transitional federal government?

24 A Ethiopians and the transitional federal government. Yes,
25 sir.

McKinley - by the Court

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1 Q Okay. When you talked about the goal of the jihad you
2 said it was to establish an Islamic government in Somalia.

3 A Yes, sir.

4 Q Okay. And that was to be by what means?

5 A Through armed jihad, sir.

6 Q Okay. Okay. Then I think there was another question I
7 had about -- Mr. Maldonado, you indicated, left Houston in
8 November of '05, went to Mogadishu to fight in the jihad
9 movement, took his family and they settled where, sir?

10 A Sir, I believe they were attempting to settle in Mogadishu
11 at the time, when they were in Somalia.

12 Q Okay. Did Mr. -- you indicated that Mr. Maldonado said he
13 was angry with America. Did he indicate why he was angry with
14 America?

15 A Not to me, no, sir.

16 Q Okay.

17 A I don't know anything beyond that, just that statement
18 that he made.

19 Q Okay. That he was angry with America?

20 A Yes, sir.

21 Q Okay. Now when you testified that he had -- Mr. Maldonado
22 said he had no problem with the 9/11 attack, what generally
23 does that mean?

24 A Sir, I would interpret that to mean that he did not think
25 that it was necessarily an act of evil on the part of al-Qaeda

McKinley - by the Court

32

1 and the people that actually perpetrated the attack, that he
2 thought it was a justified attack.

3 Q Okay. What kind of firearm did the "Sheik" give Mr. --
4 that Mr. Maldonado said the "Sheik" gave him?

5 A Sir, he told us it was an AK-47.

6 Q Okay. TriCon [sp.ph.]?

7 A I don't know beyond that, sir. There's multiple different
8 variants.

9 Q Okay. Well, the Russians make one, the Chinese make one.

10 A Yes, sir.

11 Q Okay. But they're all 7.62, right?

12 A If it's an AK-47, yes, sir. Other variants are the AK-74
13 which shoots a smaller round. But if it was specifically a 47
14 it was 7.62.

15 Q Okay. All right. When you talk about explosives, what
16 were the nature of these explosives? Were they IED's or --

17 A Yes, sir.

18 Q -- other type of hand-thrown explosives or what?

19 A I believe --

20 Q Or lock-and-launch explosives?

21 A Sir, RPG's were present at the camp. RPG's being rifle-
22 propelled grenades. It's a shoulder-fired, anti-armor weapon,
23 in addition to the IED's.

24 Q Okay. The clothing that Mr. -- and books that Mr.
25 Maldonado said he received were related to what? The clothing

McKinley - by the Court

33

1 were military gear?

2 A Yes, sir, he described military uniforms.

3 Q Not civilian type clothing for he and his family?

4 A Yes, sir, correct. Military style clothing.

5 Q Okay. And the books were what type of books?

6 A The only book that I remember being mentioned, Your Honor,
7 was the explosives manual.

8 Q Were they holy books?

9 A I'm sorry?

10 Q Were they holy books like the Koran and versions of those?

11 A No, sir. The only book that I'm aware of that came up was
12 a bomb manual that the bomb maker had.

13 Q Bomb manual?

14 A Yes, sir, that was possessed by the bomb maker.

15 **(Pause)**

16 Q I think you testified that when he left Mogadishu he went
17 to Jilib?

18 A Jilib, yes, sir.

19 Q Jilib?

20 A Yes, sir.

21 Q Okay. And there he received more firearms training?

22 A More training was conducted there, yes, sir.

23 Q Okay. That had to with firearms --

24 A Yes, sir.

25 Q -- explosives or what?

McKinley - by the Court

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1 A Yes, sir. Physical training and firearms training. And I
2 believe explosives there, too.

3 Q Physical training and firearms training.

4 A Yes, sir.

5 Q Okay. I think Mr. Newton asked the question that, based
6 upon what you said about the flight attendant, he was later
7 killed, that Mr. Maldonado had nothing to do with the execution
8 of that person.

9 A Sir, I don't know if Mr. Maldonado was involved in that or
10 not. I know that he was involved in the interrogation.

11 Q Okay. So that's unknown?

12 A Yes, sir.

13 Q But he was involved in the interrogation of the flight
14 attendant?

15 A Interrogation and guarding, yes, sir.

16 Q But somebody at some later point killed that individual?

17 A Yes, sir.

18 Q Okay. Because they thought he was a spy?

19 A Yes, sir.

20 Q Okay. When you talked about grinding these matches and
21 making explosives, how was that to be done?

22 A Sir, that is a method -- or the ground match sticks are
23 used as initiators. You place those, as I understand it, in
24 proximity of your main charge and those are used to initiate
25 your main charge.

McKinley - by the Court

35

1 Q Okay. So the spark ignites the -- the spark from the
2 detonator ignites the match stems, the match stems ignite the
3 explosive stem, and the explosive stem explodes?

4 A As I understand it, yes, sir.

5 Q Okay. From the contents of the powder inside?

6 A I'm sorry?

7 Q From the contents of the powder inside --

8 A Yes, sir.

9 Q -- it explodes?

10 A Yes, sir.

11 Q Okay. Do you know whether or not there ever was any
12 American women recruited, successfully recruited to go fight in
13 the jihad movement?

14 A I don't know.

15 Q Okay. That's unknown at this time?

16 A Yes, sir.

17 Q Okay. Now, when Mr. Maldonado was captured crossing the
18 border from Somalia into Kenya I didn't quite understand what
19 was going on. Was he forced out of Kenya or what were the
20 circumstances that required him to leave Somalia?

21 A Sir, the military --

22 Q It appears that he had made a concerted effort to get
23 there. And I'm concerned about what it was, what took place
24 that required him to leave under the circumstances that he
25 left.

McKinley - by the Court

36

1 A Sir, I believe the fighting had drove him and several of
2 the other mujahadin out of Chisimayu and they were fleeing for
3 Kenya for safety, as I understand it.

4 Q Okay. And that was done by the Ethiopians and the
5 Somalians?

6 A The Ethiopians and the transitional federal government,
7 yes, sir.

8 Q Okay. Which would be the Somalians?

9 A Yes, sir.

10 Q Okay. Okay. Other than this criminal complaint that
11 charges Mr. Maldonado with conspiring to use a weapon of mass
12 destruction in paragraph one, and then received military
13 training in paragraph two from al-Qaeda, are there any other
14 charges being brought anywhere else based upon this group of
15 facts?

16 A Sir, I'm not aware of any.

17 Q Okay. So all of the charges that are being brought
18 against Mr. Maldonado are here --

19 A As far as I know.

20 Q -- contained in this single complaint?

21 A As far as I know, yes, Your Honor.

22 Q Okay. All right.

23 **THE COURT:** Any other questions based upon what
24 I've asked?

25 **MR. NEWTON:** No, Your Honor.

1 **THE COURT:** All right. Mr. Cobe --

2 Sir, you may step down. You may remain in
3 the courtroom.

4 **AGENT McKINLEY:** Thank you, sir.

5 **THE COURT:** All right.

6 Mr. Cobe, is there another witness?

7 **MR. COBE:** No further witnesses, Your Honor.

8 **THE COURT:** All right. Government rest?

9 **MR. COBE:** We'll rest.

10 **THE COURT:** Government rests.

11 What says the defense, Mr. Newton?

12 **MR. NEWTON:** I'd like to call Agent Loretta Egland-
13 Anders or Andrews, whichever the pronunciation was. And also
14 Morris Gutierrez, a Houston Police Officer, both of whom are
15 present in the courtroom.

16 **THE COURT:** All right. What was the first witness?

17 **MR. NEWTON:** I may be mispronouncing her name. The
18 FBI agent sitting at the table.

19 **MS. EGLAND-ANDERS:** Loretta Egland-Anders.

20 **THE COURT:** Loretta Egland-Anders, hyphenated?

21 **MS. EGLAND-ANDERS:** Yes, sir.

22 **THE COURT:** All right. Come to the witness stand,
23 please, ma'am. Raise your right hand and be sworn.

24 **(Direct Examination of Loretta Egland-Anders previously**
25 **transcribed separately.)**

1 **THE COURT:** The next witness?

2 **MR. NEWTON:** I rest, conditioned upon my earlier
3 statements.

4 **(Pause.)**

5 **THE COURT:** Mr. Newton?

6 **MR. NEWTON:** I rest, conditioned upon my earlier
7 statements.

8 **THE COURT:** All right. You're not calling the
9 witness you said you were going to call earlier?

10 **MR. NEWTON:** No, because I think it's pointless
11 until I have actually seen the reports.

12 **THE COURT:** All right. Okay. All right. Then
13 both parties rest. Let's now proceed to argument.

14 Mr. Cobe.

15 **MR. COBE:** Yes, Your Honor.

16 Your Honor, what we have here is a United
17 States citizen, home-grown, Islamic jihadi right here. He went
18 to Somalia with the intention of conducting jihad. He wanted
19 to establish an Islamic state, just the same as al-Qaeda wants
20 to establish an Islamic Caliphate throughout the world. He
21 said he was willing to kill Americans. Bin Laden and Zawahiri
22 sent out messages asking jihadis to go to Somalia to fight that
23 war because it was their war. He traveled to Somalia to fight
24 the jihad.

25 He learned how to tear down an AK-47, a

1 firearm and clean it. He guarded a flight attendant who was
2 later murdered. He jabbed this guy with an AK-47, told him to
3 shut up and not to go anywhere. He guarded him, not letting
4 him leave, and this person, he believes, was later murdered.

5 He attended training camps with al-Qaeda
6 operatives, training on weapons and explosives. Why do you
7 train on weapons and explosives? You train on them to use them
8 to kill people.

9 **THE COURT:** Mr. Cobe, let me ask you one thing that
10 comes to mind. Mr. Newton is asking for documents. Where are
11 those documents?

12 **(Pause.)**

13 **MR. COBE:** The FBI offices, Judge.

14 May I proceed?

15 **THE COURT:** One moment, please. Let me think this
16 through. If you were to provide them to Mr. Newton, when can
17 you get them to him?

18 **MS. EGLAND-ANDERS:** They can be provided to him on
19 tomorrow evening, sir.

20 **MR. COBE:** Tomorrow evening or we could give them
21 to him tonight.

22 **THE COURT:** All right.

23 **(Court/Clerk confer.)**

24 **THE COURT:** All right, gentlemen.

25 **MR. COBE:** Your Honor, if I might?

1 **THE COURT:** One moment, Mr. Cobe.

2 Mr. Yebernetsky now tells me that in the
3 scheduling we're going to begin -- we're scheduled to begin
4 with an all day proceeding on Thursday. I won't be able to do
5 anything with that major case on Thursday and Friday, not even
6 conduct initial appearances in new cases, nothing, because of
7 the massiveness of that case. But he tells me that there's a
8 window tomorrow morning at 10:00.

9 All right. So I want the United States --

10 **MR. COBE:** Before you make your ruling, Judge, can
11 I just respond?

12 **THE COURT:** I'm not ruling. We're talking about
13 logistics. I'm going to have to continue this till tomorrow
14 morning and interrupt your argument. But I want Mr. Newton to
15 be given those documents before eight o'clock tomorrow.

16 **MR. COBE:** That was the ruling I was trying to
17 avoid, Judge.

18 **THE COURT:** All right. Mr. Newton, you either go
19 to the FBI building and get them or arrange for somebody to
20 give them to you before eight o'clock tomorrow. And be back
21 here to proceed in this matter at 10:00.

22 All right. Then I'm going to conclude this
23 matter before noon tomorrow, okay? And the rulings will be
24 made at that time.

25 Yes, sir?

1 **MR. COBE:** The defense should not be allowed to
2 manufacture discovery, which is what he did by putting her on
3 the stand and then demanding the documents that she wrote, the
4 reports.

5 **THE COURT:** Well, when a witness testifies --

6 **MR. COBE:** Now we're going to postpone the hearing
7 because he did that.

8 **THE COURT:** All right. I want to be fair. I want
9 to be fair with both sides. The witness testifies, then the
10 witness's supporting testimony can be addressed.

11 **MR. MARTINEZ:** Judge, under Rule 26.2 we are
12 required as the Government to turn over all documents that a
13 witness relies upon to testify, Your Honor. He can't, under
14 that rule, then call any witness he can to go on a fishing
15 expedition and he's done so, not on a good faith basis, Your
16 Honor. He's trying to guess here that there is information
17 that supports --

18 **THE COURT:** Well, I didn't say that the information
19 could be used for further cross examination. I said that Mr.
20 Newton is entitled to see the material.

21 **MR. MARTINEZ:** And, Judge, I agree with that. He's
22 entitled to --

23 **THE COURT:** Okay. Now once he sees the material,
24 then we can argue about whether it's relevant for this
25 proceeding or not.

1 **MR. MARTINEZ:** Judge, he's entitled to see it as
2 part of Rule 16 discovery for purposes of a hearing in this
3 courtroom. He's not entitled under the rules to get that
4 information unless a witness testifies from that. And he can't
5 call a Government witness to try to force the Court then to
6 make the Government produce that information.

7 **THE COURT:** Okay. I'm going to disagree with you.
8 All right. Provide the information before eight o'clock.
9 Let's proceed at 10:00, Mr. Cobe.

10 **MR. COBE:** Yes, Judge.

11 **THE COURT:** Okay.

12 **MR. NEWTON:** Your Honor, I'm happy to meet the
13 Government in this courtroom at 8:00 o'clock. I think those
14 two hours will be sufficient for me to go through the
15 statements.

16 **THE COURT:** All right. The logistics, all of you
17 are big boys and girls, you can work that out. But just be
18 prepared to go. I'm not going to be able to postpone this
19 matter beyond ten o'clock.

20 **MR. NEWTON:** And just to clarify, all I'm really
21 looking for here are the memoranda and written statements or
22 whatever, that concern the own words that they claim Mr.
23 Maldonado made. I'm not looking for anything else. I just
24 want to know -- Because that's what their case hinges upon, on
25 the words he supposedly told the agents and the police officer.

1 And that's all I'm interested in.

2 **THE COURT:** I think that's fair. You may have that
3 information. But logistically, let's get it before
4 8:00 o'clock and let's be ready to roll at 10:00.

5 I'm going to have a chambers full of people,
6 I'm sure, tomorrow morning for other -- pen registers,
7 et cetera, et cetera, et cetera, and I'm going to be ready to
8 go at 10:00 o'clock. Okay?

9 **MR. NEWTON:** Yes, sir.

10 **THE COURT:** All right. Putting everybody on fair
11 notice that that's the plan.

12 **(Pause.)**

13 **THE COURT:** All right. Good night. All right.
14 Marshal?

15 **THE MARSHAL:** Yes, Judge?

16 **THE COURT:** Bring up the foreman of the grand jury.
17 All right. Where's the grand jury foreman,
18 Mr. Cobe? Oh, I'm asking you. You probably don't know.

19 **THE CLERK:** I shall inquire and see if I can get
20 the grand jury foreman --

21 **THE COURT:** You're going to need time to get him up
22 here?

23 **THE CLERK:** A couple of minutes, Judge.

24 **THE COURT:** All right. Let's take a brief recess
25 for about five minutes then we'll come back for the grand jury.

1 **MR. SPEAKER:** May I be excused, Your Honor?

2 **THE COURT:** Yes, sir. Those parties who need to be
3 excused are excused.

4 **(This proceeding concluded at 5:17 p.m.)**

5 * * * * *

6 *I certify that the foregoing is a correct transcript from the*
7 *electronic sound recording of the proceedings in the*
8 *above-entitled matter.*

9 */s mhenry*

10 _____

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